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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**In re JOSHUA W., a Person Coming
Under the Juvenile Court Law.**

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSHUA W.,

Defendant and Appellant.

A094578

**(Solano County
Super. Ct. No. J31830)**

Joshua W. (Joshua) was placed on probation after admitting a misdemeanor violation of Penal Code section 148 (resisting or delaying an officer in his duties).¹ As conditions of his probation, the juvenile court required him to submit to random chemical testing and warrantless searches of his person and residence. He contends these probation conditions were unreasonable and unconstitutional. We disagree and affirm the judgment.

I. FACTS AND PROCEDURAL HISTORY

Joshua's mother, Deborah Woods (Woods), reported to the Fairfield Police Department that she suspected Joshua had stolen a chrome bicycle he recently brought into their apartment. Officer Blacklock was dispatched to the residence. Woods showed him the bicycle in the living room, and told the officer that Joshua had said it was "none of her business" where the bicycle came from. Officer Blacklock could not locate any serial numbers on the bicycle and was unable to determine through a records check

¹ Unless otherwise indicated, all further section references are to the Penal Code.

whether it was stolen. At Woods' request, Officer Blacklock removed the bicycle from the apartment.

As he questioned Joshua about the bicycle, Joshua became extremely uncooperative and refused to answer any questions. At one point, Joshua became irate and ordered the officer to leave the apartment. A few minutes later, the officer followed Joshua outside and attempted to explain why he was taking the bicycle. Joshua refused to listen and became verbally abusive. When Officer Blacklock instructed Joshua to remain inside the apartment at his mother's request, Joshua refused. As the officer attempted to talk to him further, Joshua interrupted and threatened: "I'll fucking crack your head open." Joshua was then arrested.

A petition filed under Welfare and Institutions Code section 602 alleged that Joshua committed a felony violation of section 69 (resisting an executive officer by means of threat or violence). At the jurisdictional hearing, the petition was amended to add a misdemeanor violation of section 148 (resisting or delaying an officer in the performance of his duties). Joshua admitted the section 148 misdemeanor, and the section 69 allegation was dismissed.

During a court-ordered psychological evaluation by Dr. John Peters, Joshua denied stealing the bicycle, claiming he had obtained the frame from a friend and assembled the bicycle over time from scrap pieces. In his only prior brush with the law, Joshua had been cited for a daytime curfew violation. At the time of the instant offense, Joshua was 14 years old, seldom attended school, received failing grades, and had been suspended from class several times for "disruption and defiance."

In interviews with the probation department, Woods claimed Joshua was disrespectful to her and would not obey her rules or attend school as she demands. Although he had not acted aggressively towards her, Joshua's uncontrollable temper led Woods to fear he would attack her physically. Joshua had kept knives in his room, until they were removed by her friend, and she feared he would harm one of the children in the neighborhood, with whom he had acted aggressively. In light of Joshua's refusal to comply with her directions, Woods doubted that home supervision would be effective.

Woods' brother, Melvin Woods, a retired peace officer from the California Department of Corrections, advised the trial court by letter that his sister "has to sleep very light with her door lock[ed], because my sister is afraid [Joshua and his brother] will kill[] her."

Based on Joshua's physical changes and behavior, Woods suspected Joshua was using drugs. However, when he was interviewed initially by another probation officer, Joshua was "somewhat closed about his use of alcohol or drugs. His answers were unclear, and attempts to clarify his statements [were] met with resistance."

Dr. Peters concluded that Joshua is very depressed and exhibits possible symptoms of attention deficit disorder. He observed that Joshua's "problems appear to stem from dysfunctional family relationships."

At the dispositional hearing on March 28, 2001, the court declared Joshua a ward of the court pursuant to Welfare and Institutions Code section 602. Joshua was removed from his mother's custody and committed to the care, custody, and control of the probation officer for placement in a suitable foster home or institution, such as a program called "New Foundations." Joshua's maximum period of confinement was one year, with appropriate credits given. As conditions of his probation, the court ordered Joshua to obey all laws, report to his probation officer, complete 50 hours of volunteer work, write a letter of apology to Officer Blacklock, pay a \$25 restitution fine, and, after completion of his out-of-home placement in New Foundations, observe a curfew, attend school regularly, and maintain acceptable grades. As additional conditions of probation, Joshua was ordered not to possess weapons or ammunition, not to use alcohol or drugs, to submit to random drug and alcohol testing, and to submit his person and property to search and seizure at any time of the day or night. Joshua objected to the chemical testing and search conditions. In response to the objection to chemical testing, the court explained that it wanted Joshua to "obey the law, and that is one of them."

This appeal followed.

II. DISCUSSION

Joshua contends the juvenile court erred in imposing the probation conditions pertaining to chemical testing and warrantless searches.

Welfare and Institutions Code section 730 authorizes the juvenile court to “impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.” (Welf. & Inst. Code, § 730, subd. (b).) In planning conditions of probation, the juvenile court must consider the minor’s entire social history, in addition to the circumstances of the offense. (*In re Todd L.* (1980) 113 Cal.App.3d 14, 20 (*Todd L.*.)

The juvenile court has broad discretion in formulating conditions of probation, which we will not disturb except in cases of manifest abuse. (*In re Tyrell J.* (1994) 8 Cal.4th 68, 81; *In re Josh W.* (1997) 55 Cal.App.4th 1, 5 (*Josh W.*.) A condition of probation is deemed valid unless it: (1) has no relationship to the crime of which the offender was convicted; (2) relates to conduct which is not itself criminal; and (3) requires or forbids conduct which is not reasonably related to future criminality. (*People v. Lent* (1975) 15 Cal.3d 481, 486; *Josh W.*, *supra*, at pp. 5-6.) Because juvenile probation conditions are imposed on the minor to ensure his rehabilitation, “[a] condition of probation which is impermissible for an adult criminal defendant is not necessarily unreasonable for a juvenile receiving guidance and supervision from the juvenile court. (*Todd L.*, *supra*, 113 Cal.App.3d at p. 19; see *In re Frankie J.* (1988) 198 Cal.App.3d 1149, 1153.) Indeed, a juvenile court may impose a condition of probation that would be unconstitutional—“so long as it is tailored to specifically meet the needs of the juvenile.” (*Josh W.*, *supra*, at p. 5.)

A. DRUG AND ALCOHOL TESTING CONDITION

The probation condition requiring Joshua to “submit his person to drug and alcohol testing by any peace officer at any time of the day or night” does not relate to Joshua’s offense—disobeying a peace officer (§ 148)—since the offense neither involved drugs or alcohol nor was committed by Joshua while under the influence of those substances. The question, therefore, is whether the probation condition relates to criminal conduct or is reasonably related to Joshua’s future criminality. (*Lent*, *supra*, 15 Cal.3d at p. 486.)

We find persuasive the analysis set forth by Justice Puglia in *In re Kacy S.* (1998) 68 Cal.App.4th 704 (*Kacy S.*). There, the trial court had placed a minor on in-home probation subject to the condition that he submit to urine testing pursuant to Welfare and Institutions Code section 729.3. The minor's offense of fighting in public did not involve drugs or alcohol, and there was no evidence of substance abuse in his social history. Nevertheless, the Court of Appeal upheld the probation condition because the condition was both related to criminal conduct and reasonably related to future criminality. Since "[t]he urine testing condition is designed to detect the presence of substances whose use by minors is *unlawful*," the court reasoned, the testing relates to conduct which is in itself criminal. (*Kacy S.*, *supra*, at p. 710, italics in original.) Moreover, the court concluded, the testing was reasonably related to future criminality because the Legislature has recognized that "'alcohol and drug abuse' are 'precursors of serious criminality.'" (*Ibid.*, quoting Stats. 1989, ch. 1117, § 1, subd. (a)(2), p. 4113.)

In addition, the court in *Kacy S.* determined that the testing condition is a reasonable intrusion on a juvenile probationer's expectations of privacy, in light of the strong governmental interest in protecting the public and rehabilitating the minor. (*Kacy S.*, *supra*, 68 Cal.App.4th at pp. 710-711.) As the court in *Kacy S.* explained, the drug and alcohol test condition "protects the public by establishing procedures to deter or prevent use of alcohol and unlawful drugs by minors. It advances the rehabilitation of young offenders by seeking to detect alcohol or drug use as a precursor of criminal activity in order to facilitate intervention at the earliest time." (*Id.* at p. 711.)

We recognize that, unlike here, the probation condition in *Kacy S.* had been imposed under Welfare and Institutions Code section 729.3, which permits a juvenile court to order urine testing for drugs or alcohol where the minor is *not* removed from the physical custody of his or her parent or guardian. (*Kacy S.*, *supra*, 68 Cal.App.4th at pp. 707-708.) The logic of *Kacy S.* is nonetheless entirely applicable to this proceeding. Welfare and Institutions Code section 729.3 simply codifies a juvenile court's discretion to impose a chemical testing condition where the minor is an in-home probationer. It does not *forbid* chemical testing where the minor has been placed in an *out-of-home*

facility. Nor does it strip the juvenile court of the general discretion it has, in all circumstances, to impose “all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.” (Welf. & Inst. Code, § 730, subd. (b).) Indeed, the court in *Kacy S.* concluded that, even if it “were to weigh the testing condition on the scale devised to evaluate the appropriateness of probation conditions imposed pursuant to subdivision (j) of Penal Code section 1203.1 [pertaining to probation conditions for adult offenders], the condition would *have to be upheld*.” (*Kacy S.*, *supra*, at p. 709, italics added.) Moreover, although Joshua was initially removed from his mother’s home and placed in New Foundations, the expectation at sentencing was that Joshua would be *returned* to his mother’s custody during the probation period, after he completed the New Foundations program. At the very least, *Kacy S.* is instructive on the issue before us.

Because the chemical testing condition is designed to detect the presence of substances whose use by Joshua would be unlawful, the condition relates both to criminal conduct and to his potential future criminality. Therefore, under the reasoning of *Kacy S.*, we would uphold the probation condition.

Furthermore, even if we were to disregard the cogent analysis in *Kacy S.* (which our Supreme Court declined to review), we would reach the same result under other long-standing precedent, based on the evidence before the juvenile court. Where a minor’s offense does not involve drugs or alcohol, chemical testing conditions may be upheld if the minor has used drugs or alcohol in the past, particularly if his home environment or other circumstances suggested such use would be encouraged or go undetected. (See e.g., *In re Jason J.* (1991) 233 Cal.App.3d 710, 714, 718-719 [minor, a gang member, admitted he had drunk beer in the past and the probation report noted that “‘drug usage is common amongst gang members’”], disapproved on other grounds in *People v. Welch* (1993) 5 Cal.4th 228, 237; *In re Jimi A.* (1989) 209 Cal.App.3d 482, 487-88 (*Jimi A.*) [minor was on in-home probation, with inadequate parental supervision, and had an admitted background of substance abuse]; *In re Laylah K.* (1991) 229 Cal.App.3d 1496, 1500-1503 (*Laylah K.*) [minor admitted association with gang

members and alcohol and marijuana use, and was being returned home without adequate supervision and parental control], disapproved on other grounds in *In re Sade C.* (1996) 13 Cal.4th 952, 962, fn. 2.)

Joshua does not have a history of substance abuse, and he denies using drugs or alcohol, even on an experimental basis. Joshua also denies gang involvement, and there is no indication in the record he associates with gang members. There is, however, evidence in his social history that he may have been using drugs. Joshua's mother stated she suspected Joshua was using drugs because she had "noticed physical changes that would indicate drug use." In addition, during his initial probation interview, Joshua was "closed" and evasive about his drug and alcohol use.

Moreover, as we noted above, Joshua will be returned to his mother's custody after the New Foundations program ends. Joshua's mother asserted she was unable to adequately supervise him in light of his defiant attitude. The prospect of inadequate supervision and parental control therefore provides further justification for the probation condition. (See *Jimi A.*, *supra*, 209 Cal.App.3d at pp. 487-88; *Laylah K.*, *supra*, 229 Cal.App.3d at pp. 1500-1503.) Although Joshua notes that Woods was vigilant enough to call the police when she thought he had stolen a bicycle, the value of the probation condition is to detect substance abuse that she might *not* detect herself, particularly since Joshua is unquestionably defiant and nonresponsive to his mother's inquiries. At bottom, the probation condition is tailored to Joshua's circumstances, and the trial court did not abuse its discretion in imposing it.

B. SEARCH CONDITION

The juvenile court ordered Joshua "to submit his person and property, including his mother's automobile and residence to search and seizure by any peace officer at any time of the day or night." Although this probation condition does not forbid criminal conduct, it is valid unless it lacks any reasonable relationship to Joshua's crime or to the prevention of future criminality.

Search conditions have generally been upheld where the crime has involved the possession or use of drugs, alcohol, or weapons, or where the minor has a history of

substance abuse or weapons possession. (*Todd L.*, *supra*, 113 Cal.App.3d at p. 20 [minor arrested for petty theft because of evidence of drug use and drug-related offenses]; *Laylah K.*, *supra*, 229 Cal.App.3d at p. 1502 [minor admitted using alcohol]; *In re Michael D.* (1989) 214 Cal.App.3d 1610, 1616-1617 [minor charged with assault with a deadly weapon admitted he was a gang member].)

Here, the probation condition is not related to Joshua's offense of disobeying a peace officer, which did not involve the use or possession of alcohol, drugs, or a weapon.

Nevertheless, the probation condition was reasonably related to preventing Joshua's future criminality. Although the instant matter was Joshua's first sustained offense, he denied substance abuse and gang membership, and there is no evidence that he has used a weapon, there is ample evidence in Joshua's social history of a potential for violence. Joshua's mother reported that he had kept knives in his bedroom. He was aggressive with neighborhood children, and she was afraid he would hurt them in light of his severe temper. She was unable to supervise Joshua adequately and feared he would harm her. Moreover, he was verbally abusive to Officer Blacklock and threatened to "crack his head open." Although the psychological evaluation described Joshua as depressed rather than violent, and there is no evidence that Joshua has actually perpetrated violence, it was not unreasonable under the circumstances to subject an angry, threatening youth to the search condition. The probation condition is suitably tailored to Joshua's circumstances, and the trial court did not abuse its discretion in imposing it.

III. DISPOSITION

The judgment is affirmed.

STEVENS, J.

We concur.

JONES, P.J.

SIMONS, J.